IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12650 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASHBHAI CHHAGANBHAI PATEL

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 12650 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MS HB PUNANI, LD. AGP for Respondent No. 1-2,4

RULE SERVED for Respondent No. 1-2

M IA SHAIKH for Respondent No. 3

MR JITENDRA MALKAN for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/12/2004

ORAL JUDGMENT

Heard Ms.Banna Dutta, learned counsel appearing for the petitioner; Mr.M.I.Shaikh, ld.standing counsel appearing on behalf of respondent-Union of India and Ms.H.B.Punani, ld.AGP, appearing on behalf of the respondent-State. The reply affidavit filed by the respondent nos.1 to 3 tendered today by Punani and also the affidavit tendered by Mr.Malkan filed on behalf of the respondent-Union of India, are taken on record. As the respondent no.4 is a formal party having custody of the petitioner-detenu, no formal reply affidavit is required to be filed by the respondent no.4. The Court has considered the reply affidavits filed by the respondents.

2. The present petition is filed under Article 226 of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 10th September, 2004, passed by the District Magistrate, Ahmedabad, under the purported exercise of powers vested with the Detaining Authority under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the Act'). It is submitted that the impugned order is violative of Articles 21, 22(1) and 22(5) of the Constitution of India.

3. The petitioner is served with the grounds for detention on the day on which the order of preventive detention was executed and it is alleged that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supplies of essential commodities like petroleum solvent, his detention was necessary.

4. For recording subjective satisfaction, the Detaining Authority has considered the report submitted by the Checking Squad based on a raid carried out on 12th July, 2004, at the business premises of the present petitioner, whereby the Checking Squad found about 2855 litres of petroleum solvent stored in 14 barrels from a field. Total 16 barrels were found but out of 16 barrels, 11 barrels were full of 220 litres of solvent and other barrels were having some lesser quantity than the capacity of a barrel. The other articles like a pipe fitted with a brass valve and the iron utensils that can be used for pouring petroleum solvent, were also found by the Checking Squad and this aspect is also considered by the authority. The authority has also considered that the petitioner was not holding any valid licence to deal with the business of petroleum solvent or was also not

holding any licence either to store or transport such solvent. So it was found that the petitioner is involved in unauthorized dealing and handling with the petroleum solvent, an essential commodity declared under the Act and black marketing the same or the same was used in adulterating other petroleum products of higher value than the petroleum solvent. The authority has considered the report of the Forensic Science Laboratory (FSL) as well as the fact of registration of one criminal offence on 6th August, 2004, by Odhav Police Station. Total value of the material seized is assessed at Rs.61,500/- approximately.

5. The impugned order is assailed on various grounds. However, learned counsel appearing for the petitioner Ms.Dutta has concentrated her arguments mainly on the ground that unexplained delay of even one day by respondent-Union of India i.e. Central Government, in deciding the representation should be treated fatal and continued detention should be terminated. So only on this ground, without entering into the merits of other grounds, the order of preventive detention ought to have been set aside. While developing this argument, she has pointed out by referring the reply affidavits as well as the relevant ground taken up by the petitioner. Undisputedly, it is averred that a written representation dated 19th September, 2004, was sent to the Central Government inter alia praying revocation of the order through the advocate. The said written representation was received by the Central Government on 24th September, 2004, through the office of the District Magistrate, Ahmedabad, vide forwarding letter dated 22nd September, 2004. The representation received by the competent authority in Central Government was decided on 28th September, 2004, and the decision was conveyed to the petitioner-detenu through the Superintendent, Central Prison, Vadodara, on the same day by telegram. According to Ms.Dutta, if a liberal view is taken ignoring two days, i.e. 25th September, 2004 and 26th September, 2004, being non-working days in the office of the Central Government, even then the decision could have been taken promptly on 27th September, 2004. In the present case, the decision is taken on 28th September, 2004. So for one day, the representation remained unattended. It is argued that it was possible for the respondent-Union of India to explain the delay of one day i.e. 27th September, 2004; but the reply affidavit is totally silent on this point. So the unexplained delay even of a day would make the detention bad and such an order of preventive detention cannot be permitted to be continued. While developing this argument Ms.Dutta has placed

reliance on the following decisions of this Court viz. (i) Special Civil Application No.516 of 2004, decided on 8th July, 2004 (Coram :P.B. Majmudar, J), (ii) Special Civil Application No.17323 of 2003, decided on 17th March, 2004 (Coram : D.P.Buch, J), (iii) Special Civil Application No.1801 of 2004, decided on 1st July, 2004 (Coram : P.B. Majmudar, J) and (iv) Special Civil Application No.9664 of 1999, decided on 16th March, 2000 (Coram : A.L. Dave,J).

6. This Court (Coram : A.L. Dave, J) while dealing with aforesaid Special Civil Application No.9664 of 1999 decided on 16th March, 2000, has quashed and set aside the order of preventive detention as well as the continued detention on the ground of unexplained delay of one day in despatching the representation. In the present case also, the delay of one day has remained unexplained. So the ratio of the cited decision would squarely apply to the facts of the present case.

7. The other ground pressed into service by Ms.Dutta is that there is no explanation as to the delay caused in passing the order of preventive detention. The relevant para:7 of the reply affidavit filed on behalf of the Detaining Authority, reads as under :

> "7. With reference to para 7, I say and submit that contentions raised by petitioner are not true, it cannot be said that order of detention has been passed after delay of 1 month and 29 days. I say that for verification of place, and after getting the FSL report, inquiry proceedings, taking into consideration of all the relevant documents, the order of detention is passed without delay and it cannot be said that there is delay in passing the order."

8. It is true that technically it is possible to argue that this is not a case of delay of one month and 29 days. It is argued that as the petitioner was not holding any valid licence to sell petroleum solvent, he could have been detained on the very next day of the raid carried out; at least on the day on which the office of the Detaining Authority was ready with more relevant material i.e. report of the FSL. Thus, on 27th July, 2004, the petitioner could have been detained immediately after receipt of the report from the FSL. When it was possible for the State machinery to institute a criminal proceeding on 5th August, 2004, with the Odhav Police Station, then why no appropriate steps of passing the

order of preventive detention were taken, is the question that could have been replied in the above referred para:7 of the reply affidavit. It is true that after arrest by police in the offence registered against the present petitioner, the petitioner was enlarged on bail on 16th August, 2004. So it can be argued that till 16th August, 2004, there was no need to pass order of preventive detention as the petitioner was in judicial custody after arrest by the police. But after the orders of bail on 16th August, 2004, again the Detaining Authority failed in passing the order of preventive detention immediately but the order of preventive detention ultimately came to be passed on 10th September, 2004. So the delay of about 23 to 24 days is again caused. This delay has also remained unexplained. Placing reliance on the decision of this Court (Coram : J.N. Bhatt, Acting C.J.), in Special Civil Application No.10079 of 2002, decided on 12th May, 2003 and in Special Civil Application No.12376 of 2002, decided on 13th May, 2003, it is argued that the entire period of delay could have been explained satisfactorily by the Detaining Authority. So the ratio of the decision of this Court (Coram : J.R. Vora, J) dated 26th August, 2003, in Special Civil Application No.10182 of 2003 in the case of Maksud Yasin Kayamkhyani v. State of Gujarat, would squarely apply to the present case. I would like to quote relevant observations of this Court (para:6), which are as under :

"6. If the facts of this case is perused and factual data is examined, it is clear that if the case is examined from the crime wise, the activities of the detenu came to light right from 25.4.2002, the dates on which the crimes allegedly committed by the detenu, registered or unreported, necessarily denotes time gap not only in respect of repeating dangerous behaviour by the detenu but that gap is apparent on the part of the authority to discover such dangerous behaviour of the detenu. An offence came to be registered i.e. third one on 17.7.2002, unreported incident as narrated by the witness occurred on 22.9.2003, again a crime for theft came to be registered against the detenu on 24.9.2002 and again on 10.10.2002 if the incident as narrated by the second witness occurred, then unexplained delay on the part of the authority crystally emerges in discovering the dangerous behaviour of the detenu because the statements of the witnesses came to be recorded on 24.10.2002 and 28.10.2002. Again, the statements came to be

verified only on 26.11.2002 by the detaining authority and the order came to be passed on 29.11.2002. The detenu has raised the plea that there is an unexplained delay in passing the order, as aforesaid. There is ample substance in the said plea. It is found that the credible chain including ground of criminal and dangerous activity of the detenu and the purpose of detention is snapped by a long gap of more than one month in absence of the detention order. The facts of the case are also covered by decision of this Court in the matter of THAKORE GIRISHJI 2 GIDHAJI JENAJI vs. DISTRICT MAGISTRATE & ORS., reported in 2002(1) GCD 338 and in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381, the detention order therefore cannot be sustained and deserves to be quashed on this ground alone."

7. So on the above grounds, the Court is accepting the say of the petitioner that the authority has committed grave error in recording subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order. Obviously, therefore, it was erroneous to exercise privilege vested with the authority under the Act. So without entering into the merits of other grounds, the order of detention is required to be quashed and set aside.

8. In view of the above, the present petition is hereby allowed. The order of detention dated 10th September, 2004, passed by the respondent no.1 herein is hereby quashed and set aside and the petitioner-detenu is hereby ordered to be set at liberty forthwith, if no longer required for any other case. Rule is made absolute with no order as to costs. Direct Service is permitted.

(C.K. Buch, J)

Aakar